SUPREME COURT, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1869

DON REHAHN, et al.,
Petitioners,
v.
GENERAL MOTORS CORPORATION, and
LOCAL UNION 160, UAW,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

REPLY OF PETITIONERS TO THE RESPONDENT GENERAL MOTORS CORPORATION'S "OPPOSITION TO PETITION FOR WRIT OF CERTIORARI"

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I.

Petitioners, 36 employees of Respondent General Motors Corporation (hereinafter referred to as GM), herewith submit their reply to the "Opposition of Respondent GM" to their petition for the Issuance of a Writ of Certiorari to the Court of Appeals for the Sixth Circuit.

We feel compelled to file this reply on behalf of the Petitioners because of the many inaccuracies of the facts and the law in Respondent GM's "Opposition".

II.

Petitioners, GM corporation employees at the "Tech Center" in the City of Warren, Michigan, originally filed their suit against respondents-defendants in the Circuit Court for Wayne County, Michigan. Respondents filed their motions to remove the case to the U.S. District Court, Eastern District of Michigan, Southern Division, on the ground that the District Court had original jurisdiction by virtue of the Labor-Management Relations Act, 28 USC 185.

The motions were granted, despite the objection filed on behalf of the petitioners, that the jurisdiction was concurrent and that the Circuit Court for Wayne County had jurisdiction.

In the case of *Vaca v Sipes*, 386 US 171, 17 L Ed 2d, 842, 87 S Ct 903, the opinion of Mr. Justice White, speaking for the court, (848)

> *"although we conclude that state courts have jurisdiction in this type of case, we hold that* Federal law governs." (emphasis ours)

In the *Vaca* case, there had been a jury trial on the merits. The case involved facts somewhat similar to the case at bar — a discharged employee asserted that he had been wrongfully discharged, and that the union had breached its duty of fair representation. Mr. Justice

White reviewed a number of decisions of the Supreme Court in reference to the duty of the unions, and said:

> "It is now well established that, as the exclusive bargaining representative of the employees . . . the union had a statutory duty fairly to represent all of those employees, both in its collective bargaining . . . *and in its enforcement of the resulting collective bargaining agreement. . . .*"(our emphasis)

III.

Respondent GM, in its selected excerpts from Supreme Court decisions, creates an erroneous situation not existent in the case at bar. The arguments presented by the respondent clearly demonstrate the position of the petitioners — that there are material disputed questions of fact which could not and should not be determined on a motion for summary judgment. There should be a trial on the merits. Moreover, the petitioners not only present the failure of the U.S. District Court and the Court of Appeals for the Sixth Circuit to be governed by this well established rule of law, but they also present an indefensible collusion between the two respondents, involving an utter lack of good faith and lack of fair representation on the part of the local union, inter alia, in the face of the action of the International Executive Board of the International UAW sustaining the position of the petitioners that they be reinstated with their attendant seniority.

IV.

There was no justification for resorting to arbitration. The Union-Management Agreement established "plant seniority". The petitioners in 1970 having plant seniority from 13 to 20 years at the GM "Tech Center" should have been continued in their employment and not be replaced by recent newcomers in defendant Local Union 160, who came over from the Ternstedt Plant in Detroit, to the Tech Center in 1972.

Arbitration was uncalled for. The International Executive Board of the International UAW had decided that the petitioners were entitled to plant seniority, and directed the local union to proceed to enforce the union-management agreement.

The arbitration and the umpire's decision were a violation of the language of the union-management agreement. Paragraph 47 of said agreement provides:

> *"The umpire shall have no power to add to or subtract from or modify any of the terms of this agreement or any agreement made supplementary thereto."* (emphasis ours)

The umpire, through the collusion of the respondents, "blotted" out paragraph 59 of the Union-Management agreement which established plant seniority and virtually changed the terms of said agreement. By this procedure, petitioners, all of whom are skilled journeymen, were stripped of their seniority when they were recalled by GM at the end of over two years of unemployment, and were put at the bottom of

the seniority totem pole, with attendant loss of substantial rights and benefits, as if they were new employees. The respondents by their collusion have attempted to cover-up their indefensible wrong doing.

Joe Malotke, defendant local union Plant Chairman, boasted to some of the petitioners, in May 1974, that if he had been on their side, they would not have lost the umpire decision.

Respondents have added insult to injury by claiming the validity of the collusive arbitration proceeding.

On p. 6 of Respondent's "Opposition", an excerpt is quoted from the case of *Hines v Anchor Motor Freight, Inc.*, 47 L Ed 2d 231, in support of its position. The entire paragraph from which the excerpt is taken reads:

(P 243)

> "even though under Vaca the employer may not insist on exhaustion of grievance procedures when the union has breached its representation duty, it is urged that when the procedures have been followed and a decision favorable to the employer announced, the employer must be protected from relitigation by the express contractual provision declaring a decision to be final and binding. *We disagree. The union's breach of duty relieves the employee of an express or implied requirement that disputes be settled through contractual grievance procedures; if it seriously undermines the integrity of the arbitral process the union's breach also removes the bar of the finality of the provisions of the contract.* (our emphasis)

We respectfully submit that in the case at bar, cases cited by respondent GM have to do with situations involving arbitration in a manner wholly foreign and distinct from the facts in the case at bar, where petitioners claim that there was no need or reason for arbitration. Their position had been sustained by the International Executive Board of the International UAW, which held that they were entitled to the protection of the plant seniority provided in the union-Management agreement and directed defendant local union to proceed to enforce the agreement provisions.

V.

It is the position of the petitioners that the lower courts acted on an erroneous conclusion of fact and failed to recognize the Rule of Law in the matter of motions for Summary Judgment; both the District Court and the Court of Appeals for the 6th Circuit utterly failed to abide by the Rule of law, as well as the decision of this Court in the *Hines v Anchor Motor Freight*, case, *supra*. There are material disputed questions of fact, and summary judgments should not have been granted.

Bishop v Wood et al., 426 US 341, 48 L Ed 2d 684, 96 S Ct. 2084.

> (691) "(6a) In our appraisal of petitioner's claim we must accept his version of the facts since the District Court granted summary judgment against him."

CONCLUSION

Petitioners respectfully submit that they should not have been made the victims of the summary judgments rendered against them. There was no trial. There are many material disputed questions of fact which can only be determined upon a trial on the merits. They were denied the benefit of the Rule of Law promulgated over many years and repeatedly upheld by this Court in reference to motions for summary judgment.

We respectfully urge that the petitioners should have their day in Court; that the facts, the law, and the equities unite in praying that this Court exercise its discretion to grant and issue a Writ of Certiorari to the Circuit Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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Dated at Detroit, Michigan,
August 8th, 1979